

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DAYSHAWN OWENS,

Petitioner,

v.

**Civil Action No. 2:08CV102
Criminal Action No. 2:05CR4
(Judge Maxwell)**

UNITED STATES OF AMERICA,

Respondent.

ORDER

It will be recalled that on June 30, 2009, Magistrate Judge James Seibert filed his Report and Recommendation That §2255 Motion Be Denied, wherein the Petitioner was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. On July 13, 2009, Petitioner filed Motion For Rehearing and Reconsideration, which the Court has considered as Objections to the Magistrate Judge's Opinion/Report and Recommendation.

Upon examination of the report from the Magistrate Judge, it appears to the Court that Petitioner's motion, which was filed pursuant to 28 U.S.C. §2255, was properly considered by Magistrate Judge Seibert in his Report and Recommendation. As found by Judge Seibert, a challenge to the execution of a sentence is not properly brought under 28 U.S.C. §2255. Upon consideration of the Petitioner's objections, the Court finds that the Petitioner has not raised any issues that were not thoroughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the

Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

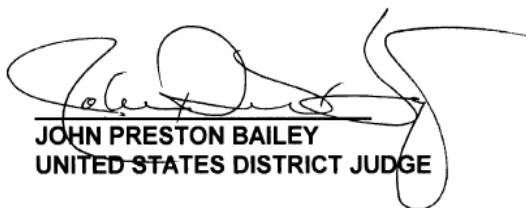
ORDERED that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's §2255 Motion be, and the same hereby is, **DENIED**.
It is further

ORDERED that the above styled action be, and the same hereby is, **DISMISSED** with prejudice and **STRICKEN** from the docket of this Court. It is further

ORDERED that, pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. §2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy §2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong (citing Slack v. McDaniel, 529 U.S. 473, 484 (2000))).

ENTER: March 15, 2010.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE